

DOCKET SECTION

**OFFICIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE
POSTAL REGULATORY COMMISSION**

In the Matter of:)

RATE AND SERVICE CHANGES TO)
IMPLEMENT BASELINE NEGOTIATED)
SERVICE AGREEMENT WITH)
BANK OF AMERICA CORPORATION)

Docket No.: MC2007-1

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POSTAL REGULATORY COMMISSION

In the Matter of:)
)
RATE AND SERVICE CHANGES TO) Docket No.: MC2007-1
IMPLEMENT BASELINE NEGOTIATED)
SERVICE AGREEMENT WITH)
BANK OF AMERICA CORPORATION)

Suite 200
Postal Regulatory Commission
901 New York Avenue, N.W.
Washington, D.C.

Wednesday, March 14, 2007

The above-entitled matter came on for a prehearing
conference pursuant to notice, at 10:03 a.m.

BEFORE:

HON. DAN G. BLAIR, CHAIRMAN
HON. RUTH Y. GOLDWAY, COMMISSIONER
HON. TONY L. HAMMOND, COMMISSIONER
HON. MARK D. ACTON, COMMISSIONER

APPEARANCES:

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P R O C E E D I N G S

(10:03 a.m.)

CHAIRMAN BLAIR: Good morning, everyone.

ALL: Good morning.

CHAIRMAN BLAIR: I'm Dan Blair. I'm the chairman of the Postal Regulatory Commission, and I'm pleased to welcome everyone here this morning.

This is a prehearing conference in Docket Number MC-2007-1 considering a request by the United States Postal Service to implement a negotiated service agreement with the Bank of America Corporation.

With me this morning are Commissioners Mark Acton, Ruth Goldway, and Tony Hammond.

At this point, I would like to ask the counsel to identify themselves for the record. American Postal Workers Union?

MS. WOOD: Good morning, Mr. Chairman. Jennifer Wood for the American Postal Workers Union.

CHAIRMAN BLAIR: I'm sorry. I couldn't hear you.

MS. WOOD: Jennifer Wood for the American Postal Workers Union.

CHAIRMAN BLAIR: Thank you. GrayHair Software, Inc.

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1 (No response.)

2 CHAIRMAN BLAIR: For the record, there is no
3 counsel representing them present at this time.

4 Newspaper Association of America.

5 (No response.)

6 CHAIRMAN BLAIR: No response. Office of the
7 Consumer Advocate, Postal Regulatory Commission.

8 MS. DREIFUSS: Good morning, Mr. Chairman
9 and Commissioners. I'm Shelley Dreifuss with the
10 Office of Consumer Advocate. With me today is Rand
11 Costich.

12 CHAIRMAN BLAIR: Thanks, Shelley.

13 Is David Popkin present?

14 (No response.)

15 CHAIRMAN BLAIR: The record will reflect
16 David Popkin is not present.

17 The United States Postal Service.

18 MR. CONNOLLY: Good morning, Mr. Chairman.
19 My name is Matthew Connolly on behalf of the United
20 States Postal Service. With me is Anthony Alverno.

21 CHAIRMAN BLAIR: Thank you.

22 Valpak Dealers Association, Incorporated.

23 MR. MILES: Good morning, Mr. Chairman and
24 Members of the Commission. John Miles on behalf of
25 the Valpak Companies: Valpak Direct Marketing

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1 Systems, Inc., and Valpak Dealers Association, Inc.

2 CHAIRMAN BLAIR: You will be representing
3 both interests.

4 MR. MILES: Yes, sir.

5 CHAIRMAN BLAIR: Thank you. Is there anyone
6 I have missed this morning?

7 MR. LEVY: Good morning, Mr. Chairman and
8 Members of the Commission. David Levy for Bank of
9 America Corporation. Also with me is my colleague,
10 Richard Young of the same law firm, Sidley Austin.

11 CHAIRMAN BLAIR: Thank you.

12 Notwithstanding these introductions, for the
13 record, I ask that during the hearings counsel
14 identify themselves for the reporter before speaking.

15 On Friday, March 9th, Order No. 6 granted a
16 Postal Service motion requesting permission to convene
17 a settlement conference after today's prehearing
18 conference. The Postal Service expressed the hope
19 that such a conference would enable participants to
20 narrow issues and better evaluate whether hearings
21 might be necessary.

22 Mr. Alverno?

23 MR. ALVERNO: Mr. Chairman, we intend to
24 convene a settlement conference after this prehearing
25 conference, and we thank you for the use of this room.

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1 CHAIRMAN BLAIR: Thank you. If you could
2 please provide the Commission with a written report by
3 the close of business, Friday, March 16th, detailing
4 any progress made on narrowing the issues in this
5 case. Participants have already submitted discovery
6 on a number of topics related to the proposed
7 negotiated service agreement. Please include in your
8 report an estimate of how much additional time parties
9 will need for such discovery.

10 I expect the Commission to issue a limited
11 number of information requests over the course of the
12 next few days.

13 Does any participant wish to raise any issue
14 for consideration this morning?

15 MS. DREIFUSS: Mr. Chairman, Shelley
16 Dreifuss from the OCA.

17 CHAIRMAN BLAIR: Shelley.

18 MS. DREIFUSS: OCA does have a concern about
19 one issue, at this time. I don't know whether,
20 ultimately, our concerns will be alleviated. We're
21 concerned about the source of the information for the
22 accept-and-read rate that is used as a key for some of
23 the discounts under this NSA.

24 We got an answer from the Postal Service on
25 Friday telling us that the source of the data from

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1 R2006-1 is from a library reference, L-110, and we've
2 now tracked back those numbers. Some of them go back
3 to MODS data from Fiscal Year 99. Some of the data
4 goes back even older than MODS data from R97-1.

5 So I think we're talking about data, at
6 least, 11 years' old, and I'm guessing that the Postal
7 Service must have improved its ability to read and
8 accept barcoded pieces at this time. This is very old
9 data.

10 So we are still trying to see what the
11 original dates were that the data were obtained and
12 also trying, at the present time, to get more recent
13 data. We have some outstanding interrogatories asking
14 for recent data. We just don't know how that's going
15 to turn out.

16 So I would say that that's the one issue
17 that we've identified that we do have concerns about.
18 Those concerns, as I say, they could be alleviated by
19 current, reliable data. If our concerns are not
20 relieved, it's conceivable that we might need to
21 cross-examine a witness about it, possibly even file
22 just a very limited piece of testimony from this
23 office.

24 As far as discovery is concerned, you
25 haven't mentioned that yet. Do you want us to give

1 you an idea of how much more we felt we might need, or
2 is that going to come later?

3 CHAIRMAN BLAIR: We'll be establishing a
4 procedural case, so we'll be waiting on that further.

5 MS. DREIFUSS: Okay.

6 CHAIRMAN BLAIR: Did the Postal Service
7 counsel service wish to respond?

8 MR. CONNOLLY: Yes, Mr. Chairman. I would
9 like to take those issues in reverse order, if I may.

10 First, with regard to the period for
11 discovery, we believe that, since there are few
12 parties in the case, and we feel that the issues are
13 fairly straightforward, that the Commission will be
14 able to resolve this case in short order.

15 We would propose, therefore, that a
16 discovery period of two weeks be established for this
17 particular case.

18 However, with regard to the OCA's concern
19 about the data being used, I believe we'll have to
20 consult with our witness in the case to find out what
21 is the most current data, but we would be happy to
22 provide you with information on that as soon as
23 possible.

24 CHAIRMAN BLAIR: Okay. As I said earlier,
25 we will be establishing a procedural schedule for this

1 case, and we will be awaiting receipt of the
2 settlement conference report from the Postal Service.

3 So, at this point, if there is not any
4 further discussion --

5 MS. DREIFUSS: Mr. Chairman, actually, there
6 is one point. The Postal Service has actually
7 proposed a specific length of time for discovery. I
8 think Mr. Connolly was saying two weeks from today.
9 Four our purposes, and particularly with respect to
10 this one issue, we don't think that would be
11 sufficient.

12 We received the answers on Friday, pointing
13 us to a library reference in 2006-1. We have now
14 traced it back pretty far. I think we can get some
15 interrogatories out by Friday of this week. What we
16 would propose instead is normally we would be
17 expecting answers in two weeks, but the Postal Service
18 has been running late with its answers. We've been
19 getting answers between one and three days late.

20 So I would say we would be looking at
21 answers to our Friday interrogatories two weeks from
22 Friday. I think we should allow another 10 days
23 beyond that to be able to ask more about these
24 numbers, if we have such questions. If it looks like
25 we don't have any, we'll let you know, and discovery

1 can end earlier.

2 MR. LEVY: May I be heard, Mr. Chairman?

3 My understanding, my recollection, is that
4 the discovery cutoff is for initial discovery and does
5 not serve to bar follow-up discovery, and it's
6 certainly not our intent, and I don't think it's the
7 Postal Service's intent, to prevent OCA from pursuing
8 its concerns about the provenance of the data on the
9 read-accept rates.

10 I think it would probably make most sense to
11 do what the Commission had originally intended, to
12 wait to hear from us from the report on the settlement
13 conference before setting a discovery cutoff because
14 it's not in the interest of the applicants to try to
15 cut off the discovery rights of OCA or anyone else
16 about issues that they have already teed up, like this
17 one. We want them to be satisfied so that we don't
18 have testimony, and we don't have cross-examination,
19 and we want to work with them to make sure that that
20 occurs.

21 CHAIRMAN BLAIR: Any further discussion at
22 this point? Counsel?

23 MR. CONNOLLY: Mr. Chairman, this is Matthew
24 Connolly. I want to add to the statements that have
25 already been made that follow-up discovery that is

1 based on the questions that have already been
2 submitted in the case is allowed following the close
3 of the discovery period.

4 CHAIRMAN BLAIR: Okay.

5 MS. DREIFUSS: I might as well go ahead and
6 respond to that. I don't really want to nitpick.

7 Let me just point out, though, that quite
8 often we wind up in discovery disagreements with the
9 Postal Service when we see answers. If they don't
10 think that our follow-up questions are strictly, to-
11 the-letter follow-up, sometimes you see an answer, and
12 it triggers new ideas. That's the reason we're asking
13 for a more open-ended discovery period because we may
14 see something in the answers that isn't strictly a
15 follow-up to a specific question we thought of
16 originally.

17 That's why I'm just trying to give us just a
18 little bit more time for those kinds of things that
19 are spurred by answers that we couldn't have
20 anticipated beforehand.

21 CHAIRMAN BLAIR: Well, at this point, we're
22 going to be looking for the procedural schedule, and
23 we're going to be waiting the receipt of the
24 settlement conference report from the Postal Service,
25 and any further rulings will be forthcoming from the

1 Chair.

2 So if there is nothing further, the
3 conference will be adjourned this morning. Thank you
4 all for coming, and I appreciate it very much.

5 (Whereupon, at 10:14 a.m., the prehearing
6 conference in the above-entitled matter was
7 concluded.)

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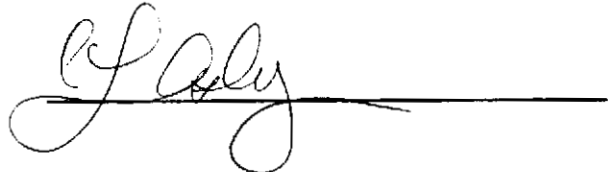
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REPORTER'S CERTIFICATE

DOCKET NO.: HC2007-1
CASE TITLE: Rate and Service Charges to Implement Baseline
Negotiated Service Agreement with Bank of America
Corporation
HEARING DATE: 3/14/07
LOCATION: Washington, D.C.

I hereby certify that the proceedings and
evidence are contained fully and accurately on the
tapes and notes reported by me at the hearing in the
above case before the Postal Regulatory Commission

Date: 3/14/07



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